

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 13, 2006

**SENATE BILL**

**No. 1438**

---

**Introduced by Senator Figueroa**

February 22, 2006

---

An act to amend Sections 125.3, 801, 801.1, 802, 802.1, 803, 803.1, 803.5, 804, 805, 805.2, 2027, and 2435 of, to add Section 801.01 to, to repeal Sections 802.3, 803.2, 803.3, and 804.5 of, and to repeal and add Section 2026 of, the Business and Professions Code, and to amend Section 12529.6 of the Government Code, relating to the healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1438, as amended, Figueroa. Healing arts: reporting requirements.

Existing law creates the Medical Board of California (Medical Board) and the Osteopathic Medical Board of California that issue a physician and surgeon's certificate to qualified applicants and regulate their practice. Existing law also creates the California Board of Podiatric Medicine (Podiatric Board) within the jurisdiction of the Medical Board, and the Division of Licensing of the Medical Board issues a certificate to practice podiatric medicine to qualified applicants while the Podiatric Board regulates their practice. Existing law requires an insurer providing professional liability insurance to a physician and surgeon and a governmental agency that self-insures a physician and surgeon or, if uninsured, the physician and surgeon himself or herself, to report information concerning settlements, arbitration awards, and judgments in malpractice actions to the practitioner's licensing board. Under existing law, those parties and a

podiatrist are also required to report this information to the practitioner's licensing board if the settlement, arbitration award, or judgment is entered against, or paid by, the practitioner's employer, as defined.

This bill would recast these reporting provisions and would specify their application to actions or claims involving a podiatrist, requiring that they be reported to the Podiatric Board.

Existing law provides for study of the peer review process of healing arts practitioners by an independent entity, to be completed by July 31, 2007.

This bill would classify the case files ~~used in that study and other information obtained by the independent entity~~ as confidential, and would *provide that information obtained or generated by the independent entity is not subject to discovery or admissible in a court proceeding. The bill would require the independent entity and its employees and contractors to assert these protections. The bill would also require the independent entity to notify the peer review body of actions taken by that body that the entity determines should have been reported to the appropriate licensing agency. The bill would extend the completion date of the study by the independent entity to July 31, 2008.*

Existing law requires, to the extent funds are available, the Little Hoover Commission to study the role of public disclosure of physician misconduct.

This bill would instead require the California Research Bureau to conduct the study, and would specify additional requirements for that study.

Existing law requires the Medical Board of California to post certain information on the Internet, including ~~misdemeanors committed by physicians and surgeons~~ *misdemeanor convictions* that are substantially related to the qualifications, functions, or duties of ~~a~~ *the* physician and surgeon. The posting requirement does not become operative until legislation is enacted that defines or identifies ~~misdemeanors~~ *misdemeanor convictions* that are substantially related.

This bill would delete that contingency, and would ~~also~~ require the board to ~~consider certain factors when determining whether~~ *post* a *misdemeanor conviction is substantially related that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.*

Existing law requires the Joint Legislative Audit Committee to select an independent entity to conduct a review of the Medical Board's financial status by January 1, 2007.

This bill would instead require the Bureau of State Audits to conduct the review by July 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature, through a  
2     request in 2008 to the Joint Legislative Audit Committee, and  
3     thereafter every two years prior to the inoperative date set forth  
4     in Section 2020 of the Business and Professions Code, that the  
5     Bureau of State Audits conduct a thorough performance audit of  
6     the Medical Board of California to evaluate the effectiveness and  
7     efficiency of the programs, and make recommendations  
8     regarding the continuation of its programs and any changes or  
9     reforms required to assure consumer protection through effective  
10    licensing and discipline of physicians and surgeons. The audits  
11    shall be completed in time to allow for the recommendations to  
12    be addressed in the legislation to extend or delete the repeal date  
13    of that section, if that legislation is introduced. The board and its  
14    staff shall cooperate with the audit, and the board shall provide  
15    data, information, and case files as requested by the auditor to  
16    perform all of its duties. The provision of confidential data,  
17    information, and case files by the board to the auditor shall not  
18    constitute a waiver of any exemption from disclosure or  
19    discovery or of any confidentiality protection or privilege  
20    otherwise provided by law that is applicable to the data,  
21    information, or case files.

22    SEC. 2. *Section 125.3 of the Business and Professions Code,*  
23    *as amended by Section 2 of Chapter 674 of the Statutes of 2005,*  
24    *is amended to read:*

25    125.3. (a) Except as otherwise provided by law, in any order  
26    issued in resolution of a disciplinary proceeding before any board  
27    within the department or before the Osteopathic Medical Board,  
28    upon request of the entity bringing the proceeding ~~may request,~~  
29    the administrative law judge ~~to~~ *may* direct a licentiate found to  
30    have committed a violation or violations of the licensing act to

1 pay a sum not to exceed the reasonable costs of the investigation  
2 and enforcement of the case.

3 (b) In the case of a disciplined licentiate that is a corporation  
4 or a partnership, the order may be made against the licensed  
5 corporate entity or licensed partnership.

6 (c) A certified copy of the actual costs, or a good faith  
7 estimate of costs where actual costs are not available, signed by  
8 the entity bringing the proceeding or its designated representative  
9 shall be prima facie evidence of reasonable costs of investigation  
10 and prosecution of the case. The costs shall include the amount  
11 of investigative and enforcement costs up to the date of the  
12 hearing, including, but not limited to, charges imposed by the  
13 Attorney General.

14 (d) The administrative law judge shall make a proposed  
15 finding of the amount of reasonable costs of investigation and  
16 prosecution of the case when requested pursuant to subdivision  
17 (a). The finding of the administrative law judge with regard to  
18 costs shall not be reviewable by the board to increase the cost  
19 award. The board may reduce or eliminate the cost award, or  
20 remand to the administrative law judge ~~where~~ *if* the proposed  
21 decision fails to make a finding on costs requested pursuant to  
22 subdivision (a).

23 (e) ~~Where~~ *If* an order for recovery of costs is made and timely  
24 payment is not made as directed in the board's decision, the  
25 board may enforce the order for repayment in any appropriate  
26 court. This right of enforcement shall be in addition to any other  
27 rights the board may have as to any licentiate to pay costs.

28 (f) In any action for recovery of costs, proof of the board's  
29 decision shall be conclusive proof of the validity of the order of  
30 payment and the terms for payment.

31 (g) (1) Except as provided in paragraph (2), the board shall  
32 not renew or reinstate the license of any licentiate who has failed  
33 to pay all of the costs ordered under this section.

34 (2) Notwithstanding paragraph (1), the board may, in its  
35 discretion, conditionally renew or reinstate for a maximum of  
36 one year the license of any licentiate who demonstrates financial  
37 hardship and who enters into a formal agreement with the board  
38 to reimburse the board within that one-year period for the unpaid  
39 costs.

1 (h) All costs recovered under this section shall be considered a  
2 reimbursement for costs incurred and shall be deposited in the  
3 fund of the board recovering the costs to be available upon  
4 appropriation by the Legislature.

5 (i) Nothing in this section shall preclude a board from  
6 including the recovery of the costs of investigation and  
7 enforcement of a case in any stipulated settlement.

8 (j) This section does not apply to any board if a specific  
9 statutory provision in that board's licensing act provides for  
10 recovery of costs in an administrative disciplinary proceeding.

11 (k) Notwithstanding the provisions of this section, the Medical  
12 Board of California shall not request nor obtain from a ~~licentiate~~  
13 *physician and surgeon*, investigation and prosecution costs for a  
14 disciplinary proceeding against the licentiate. The board shall  
15 ensure that this subdivision is revenue neutral with regard to it  
16 and that any loss of revenue or increase in costs resulting from  
17 this subdivision is offset by an increase in the amount of the  
18 initial license fee and the biennial renewal fee, as provided in  
19 subdivision (e) of Section 2435.

20 ~~SEC. 2.~~

21 *SEC. 3.* Section 801 of the Business and Professions Code is  
22 amended to read:

23 801. (a) Except as provided in Section 801.01 and  
24 subdivisions (b), (c), and (d) of this section, every insurer  
25 providing professional liability insurance to a person who holds a  
26 license, certificate, or similar authority from or under any agency  
27 mentioned in subdivision (a) of Section 800 shall send a  
28 complete report to that agency as to any settlement or arbitration  
29 award over three thousand dollars (\$3,000) of a claim or action  
30 for damages for death or personal injury caused by that person's  
31 negligence, error, or omission in practice, or by his or her  
32 rendering of unauthorized professional services. The report shall  
33 be sent within 30 days after the written settlement agreement has  
34 been reduced to writing and signed by all parties thereto or  
35 within 30 days after service of the arbitration award on the  
36 parties.

37 (b) Every insurer providing professional liability insurance to  
38 a person licensed pursuant to Chapter 13 (commencing with  
39 Section 4980) or Chapter 14 (commencing with Section 4990)  
40 shall send a complete report to the Board of Behavioral Science

1 Examiners as to any settlement or arbitration award over ten  
2 thousand dollars (\$10,000) of a claim or action for damages for  
3 death or personal injury caused by that person's negligence,  
4 error, or omission in practice, or by his or her rendering of  
5 unauthorized professional services. The report shall be sent  
6 within 30 days after the written settlement agreement has been  
7 reduced to writing and signed by all parties thereto or within 30  
8 days after service of the arbitration award on the parties.

9 (c) Every insurer providing professional liability insurance to  
10 a dentist licensed pursuant to Chapter 4 (commencing with  
11 Section 1600) shall send a complete report to the Dental Board of  
12 California as to any settlement or arbitration award over ten  
13 thousand dollars (\$10,000) of a claim or action for damages for  
14 death or personal injury caused by that person's negligence,  
15 error, or omission in practice, or rendering of unauthorized  
16 professional services. The report shall be sent within 30 days  
17 after the written settlement agreement has been reduced to  
18 writing and signed by all parties thereto or within 30 days after  
19 service of the arbitration award on the parties.

20 (d) Every insurer providing liability insurance to a veterinarian  
21 licensed pursuant to Chapter 11 (commencing with Section 4800)  
22 shall send a complete report to the Veterinary Medical Board of  
23 any settlement or arbitration award over ten thousand dollars  
24 (\$10,000) of a claim or action for damages for death or injury  
25 caused by that person's negligence, error, or omission in practice,  
26 or rendering of unauthorized professional service. The report  
27 shall be sent within 30 days after the written settlement  
28 agreement has been reduced to writing and signed by all parties  
29 thereto or within 30 days after service of the arbitration award on  
30 the parties.

31 (e) The insurer shall notify the claimant, or if the claimant is  
32 represented by counsel, the insurer shall notify the claimant's  
33 attorney, that the report required by subdivision (a), (b), or (c)  
34 has been sent to the agency. If the attorney has not received this  
35 notice within 45 days after the settlement was reduced to writing  
36 and signed by all of the parties, the arbitration award was served  
37 on the parties, or the date of entry of the civil judgment, the  
38 attorney shall make the report to the agency.

39 (f) Notwithstanding any other provision of law, no insurer  
40 shall enter into a settlement without the written consent of the

1 insured, except that this prohibition shall not void any settlement  
2 entered into without that written consent. The requirement of  
3 written consent shall only be waived by both the insured and the  
4 insurer. This section shall only apply to a settlement on a policy  
5 of insurance executed or renewed on or after January 1, 1971.

6 ~~SEC. 3.~~

7 *SEC. 4.* Section 801.01 is added to the Business and  
8 Professions Code, to read:

9 801.01. (a) A complete report shall be sent to the Medical  
10 Board of California, the Osteopathic Medical Board, or the  
11 California Board of Podiatric Medicine, with respect to a licensee  
12 of the board as to the following:

13 (1) A settlement over thirty thousand dollars (\$30,000) or  
14 arbitration award of any amount or a civil judgment of any  
15 amount, whether or not vacated by a settlement after entry of the  
16 judgment, that was not reversed on appeal, of a claim or action  
17 for damages for death or personal injury caused by the licensee's  
18 alleged negligence, error, or omission in practice, or by his or her  
19 rendering of unauthorized professional services.

20 (2) A settlement over thirty thousand dollars (\$30,000) if it is  
21 based on the licensee's alleged negligence, error, or omission in  
22 practice, or by the licensee's rendering of unauthorized  
23 professional services, and a party to the settlement is a  
24 corporation, medical group, partnership, or other corporate entity  
25 in which the licensee has an ownership interest or that employs  
26 or contracts with the licensee.

27 (b) The report shall be sent by the following:

28 (1) The insurer providing professional liability insurance to the  
29 licensee.

30 (2) The licensee, or his or her counsel, if the licensee does not  
31 possess professional liability insurance.

32 (3) A state or local governmental agency that self-insures the  
33 licensee.

34 (c) The entity, person, or licensee obligated to report pursuant  
35 to subdivision (b) shall send the complete report if the judgment,  
36 settlement agreement, or arbitration award is entered against or  
37 paid by the employer of the licensee and not entered against or  
38 paid by the licensee. "Employer," as used in this paragraph,  
39 means a professional corporation, a group practice, a health care  
40 facility or clinic licensed or exempt from licensure under the

1 Health and Safety Code, a licensed health care service plan, a  
2 medical care foundation, an educational institution, a  
3 professional institution, a professional school or college, a  
4 general law corporation, a public entity, or a nonprofit  
5 organization that employs, retains, or contracts with a licensee  
6 referred to in this section. Nothing in this paragraph shall be  
7 construed to authorize the employment of, or contracting with,  
8 any licensee in violation of Section 2400.

9 (d) The report shall be sent to the Medical Board of California,  
10 the Osteopathic Medical Board of California, or the California  
11 Board of Podiatric Medicine, as appropriate, within 30 days after  
12 the written settlement agreement has been reduced to writing and  
13 signed by all parties thereto, within 30 days after service of the  
14 arbitration award on the parties, or within 30 days after the date  
15 of entry of the civil judgment.

16 (e) If an insurer is required under subdivision (b) to send the  
17 report, the insurer shall notify the claimant, or if the claimant is  
18 represented by counsel, the claimant's counsel, that the insurer  
19 has sent the report to the Medical Board of California, the  
20 Osteopathic Medical Board of California, or the California Board  
21 of Podiatric Medicine. If the claimant, or his or her counsel, has  
22 not received this notice within 45 days after the settlement was  
23 reduced to writing and signed by all of the parties or the  
24 arbitration award was served on the parties or the date of entry of  
25 the civil judgment, the claimant or the claimant's counsel shall  
26 make the report to the appropriate board.

27 (f) If the licensee or his or her counsel is required under  
28 subdivision (b) to send the report, the licensee or his or her  
29 counsel shall send a copy of the report to the claimant or to his or  
30 her counsel if he or she is represented by counsel. If the claimant  
31 or his or her counsel has not received a copy of the report within  
32 45 days after the settlement was reduced to writing and signed by  
33 all of the parties or the arbitration award was served on the  
34 parties or the date of entry of the civil judgment, the claimant or  
35 the claimant's counsel shall make the report to the appropriate  
36 board.

37 (g) Failure of the licensee or claimant, or counsel representing  
38 the licensee or claimant, to comply with subdivision (f) is a  
39 public offense punishable by a fine of not less than fifty dollars  
40 (\$50) and not more than five hundred dollars (\$500). A knowing



1 and intentional failure to comply with subdivision (f) or a  
2 conspiracy or collusion not to comply with subdivision (f), or to  
3 hinder or impede any other person in the compliance, is a public  
4 offense punishable by a fine of not less than five thousand dollars  
5 (\$5,000) and not more than fifty thousand dollars (\$50,000).

6 (h) (1) The Medical Board of California, the Osteopathic  
7 Medical Board of California, and the California Board of  
8 Podiatric Medicine; may develop a prescribed form for the  
9 report.

10 (2) The report shall be deemed complete only if it includes the  
11 following information:

12 (A) The name and last known business and residential  
13 addresses of every plaintiff or claimant involved in the matter,  
14 whether or not the person received an award under the  
15 settlement, arbitration, or judgment.

16 (B) The name and last known business and residential address  
17 of every physician and surgeon or doctor of podiatric medicine  
18 who was alleged to have acted improperly, whether or not that  
19 person was a named defendant in the action and whether or not  
20 that person was required to pay any damages pursuant to the  
21 settlement, arbitration award, or judgment.

22 (C) The name, address, and principal place of business of  
23 every insurer providing professional liability insurance to any  
24 person described in subparagraph (B), and the insured's policy  
25 number.

26 (D) The name of the court in which the action or any part of  
27 the action was filed, and the date of filing and case number of  
28 each action.

29 (E) A brief description or summary of the facts of each claim,  
30 charge, or allegation, including the date of occurrence.

31 (F) The name and last known business address of each  
32 attorney who represented a party in the settlement, arbitration, or  
33 civil action, including the name of the client he or she  
34 represented.

35 (G) The amount of the judgment and the date of its entry; the  
36 amount of the arbitration award, the date of its service on the  
37 parties, and a copy of the award document; or the amount of the  
38 settlement and the date it was reduced to writing and signed by  
39 all parties. If an otherwise reportable settlement is entered into  
40 after a reportable judgment or arbitration award is issued, the

1 report shall include both the settlement and the judgment or  
2 award.

3 (H) The specialty or subspecialty of the physician and surgeon  
4 or the doctor of podiatric medicine who was the subject of the  
5 claim or action.

6 (I) Any other information the Medical Board of California, the  
7 Osteopathic Medical Board of California, or the California Board  
8 of Podiatric Medicine may, by regulation, require.

9 (3) Every professional liability insurer, self-insured  
10 governmental agency, or licensee or his or her counsel that  
11 makes a report under this section and has received a copy of any  
12 written or electronic patient medical or hospital records prepared  
13 by the treating physician and surgeon or podiatrist, or the staff of  
14 the treating physician and surgeon, podiatrist, or hospital,  
15 describing the medical condition, history, care, or treatment of  
16 the person whose death or injury is the subject of the report, or a  
17 copy of any deposition in the matter that discusses the care,  
18 treatment, or medical condition of the person, shall include with  
19 the report, copies of the records and depositions, subject to  
20 reasonable costs to be paid by the Medical Board of California,  
21 the Osteopathic Medical Board of California, or the California  
22 Board of Podiatric Medicine. If confidentiality is required by  
23 court order and, as a result, the reporter is unable to provide the  
24 records and depositions, documentation to that effect shall  
25 accompany the original report. The applicable board may, upon  
26 prior notification of the parties to the action, petition the  
27 appropriate court for modification of any protective order to  
28 permit disclosure to the board. A professional liability insurer,  
29 self-insured governmental agency, or licensee or his or her  
30 counsel shall maintain the records and depositions referred to in  
31 this paragraph for at least one year from the date of filing of the  
32 report required by this section.

33 (i) If the board, within 60 days of its receipt of a report filed  
34 under this section, notifies a person named in the report, that  
35 person shall maintain for the period of three years from the date  
36 of filing of the report any records he or she has as to the matter in  
37 question and shall make those records available upon request to  
38 the board to which the report was sent.

39 (j) Notwithstanding any other provision of law, no insurer  
40 shall enter into a settlement without the written consent of the

1 insured, except that this prohibition shall not void any settlement  
2 entered into without that written consent. The requirement of  
3 written consent shall only be waived by both the insured and the  
4 insurer.

5 ~~SEC. 4.~~

6 *SEC. 5.* Section 801.1 of the Business and Professions Code  
7 is amended to read:

8 801.1. (a) Every state or local governmental agency that self  
9 insures a person who holds a license, certificate or similar  
10 authority from or under any agency mentioned in subdivision (a)  
11 of Section 800 (except a person licensed pursuant to Chapter 3  
12 (commencing with Section 1200) or Chapter 5 (commencing  
13 with Section 2000) or the Osteopathic Initiative Act) shall send a  
14 complete report to that agency as to any settlement or arbitration  
15 award over three thousand dollars (\$3,000) of a claim or action  
16 for damages for death or personal injury caused by that person's  
17 negligence, error or omission in practice, or rendering of  
18 unauthorized professional services. The report shall be sent  
19 within 30 days after the written settlement agreement has been  
20 reduced to writing and signed by all parties thereto or within 30  
21 days after service of the arbitration award on the parties.

22 (b) Every state or local governmental agency that self-insures  
23 a person licensed pursuant to Chapter 13 (commencing with  
24 Section 4980) or Chapter 14 (commencing with Section 4990)  
25 shall send a complete report to the Board of Behavioral Science  
26 Examiners as to any settlement or arbitration award over ten  
27 thousand dollars (\$10,000) of a claim or action for damages for  
28 death or personal injury caused by that person's negligence,  
29 error, or omission in practice, or rendering of unauthorized  
30 professional services. The report shall be sent within 30 days  
31 after the written settlement agreement has been reduced to  
32 writing and signed by all parties thereto or within 30 days after  
33 service of the arbitration award on the parties.

34 ~~SEC. 5.~~

35 *SEC. 6.* Section 802 of the Business and Professions Code is  
36 amended to read:

37 802. (a) Every settlement, judgment, or arbitration award  
38 over three thousand dollars (\$3,000) of a claim or action for  
39 damages for death or personal injury caused by negligence, error  
40 or omission in practice, or by the unauthorized rendering of

1 professional services, by a person who holds a license,  
2 certificate, or other similar authority from an agency mentioned  
3 in subdivision (a) of Section 800 (except a person licensed  
4 pursuant to Chapter 3 (commencing with Section 1200) or  
5 Chapter 5 (commencing with Section 2000) ~~of Division 2~~) or the  
6 Osteopathic Initiative Act) who does not possess professional  
7 liability insurance as to that claim shall, within 30 days after the  
8 written settlement agreement has been reduced to writing and  
9 signed by all the parties thereto or 30 days after service of the  
10 judgment or arbitration award on the parties, be reported to the  
11 agency that issued the license, certificate, or similar authority. A  
12 complete report shall be made by appropriate means by the  
13 person or his or her counsel, with a copy of the communication to  
14 be sent to the claimant through his or her counsel if the person is  
15 so represented, or directly if he or she is not. If, within 45 days of  
16 the conclusion of the written settlement agreement or service of  
17 the judgment or arbitration award on the parties, counsel for the  
18 claimant (or if the claimant is not represented by counsel, the  
19 claimant himself or herself) has not received a copy of the report,  
20 he or she shall himself or herself make the complete report.  
21 Failure of the licensee or claimant (or, if represented by counsel,  
22 their counsel) to comply with this section is a public offense  
23 punishable by a fine of not less than fifty dollars (\$50) or more  
24 than five hundred dollars (\$500). Knowing and intentional failure  
25 to comply with this section or conspiracy or collusion not to  
26 comply with this section, or to hinder or impede any other person  
27 in the compliance, is a public offense punishable by a fine of not  
28 less than five thousand dollars (\$5,000) nor more than fifty  
29 thousand dollars (\$50,000).

30 (b) Every settlement, judgment, or arbitration award over ten  
31 thousand dollars (\$10,000) of a claim or action for damages for  
32 death or personal injury caused by negligence, error, or omission  
33 in practice, or by the unauthorized rendering of professional  
34 services, by a marriage and family therapist or clinical social  
35 worker licensed pursuant to Chapter 13 (commencing with  
36 Section 4980) or Chapter 14 (commencing with Section 4990)  
37 who does not possess professional liability insurance as to that  
38 claim shall within 30 days after the written settlement agreement  
39 has been reduced to writing and signed by all the parties thereto  
40 or 30 days after service of the judgment or arbitration award on

the parties be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the judgment or arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage and family therapist or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section or to hinder or impede any other person in that compliance, is a public offense punishable by a fine of not less than five thousand dollars (\$5,000) nor more than fifty thousand dollars (\$50,000).

~~SEC. 6.~~

SEC. 7. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either of the following to the entity that issued his or her license in writing within 30 days:

~~(1)–~~

(A) The bringing of an indictment or information charging a felony against the licensee.

~~(2)–~~

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

*(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or information or of the conviction.*

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000).

1     ~~SEC. 7.~~

2     *SEC. 8.* Section 802.3 of the Business and Professions Code  
3 is repealed.

4     ~~SEC. 8.~~

5     *SEC. 9.* Section 803 of the Business and Professions Code is  
6 amended to read:

7     803. (a) Except as provided in subdivision (b), within 10  
8 days after a judgment by a court of this state that a person who  
9 holds a license, certificate, or other similar authority from the  
10 Board of Behavioral Science Examiners or from an agency  
11 mentioned in subdivision (a) of Section 800 (except a person  
12 licensed pursuant to Chapter 3 (commencing with Section 1200))  
13 has committed a crime, or is liable for any death or personal  
14 injury resulting in a judgment for an amount in excess of thirty  
15 thousand dollars (\$30,000) caused by his or her negligence, error  
16 or omission in practice, or his or her rendering unauthorized  
17 professional services, the clerk of the court that rendered the  
18 judgment shall report that fact to the agency that issued the  
19 license, certificate, or other similar authority.

20     (b) For purposes of a physician and surgeon, osteopathic  
21 physician and surgeon, or doctor of podiatric medicine, who is  
22 liable for any death or personal injury resulting in a judgment of  
23 any amount caused by his or her negligence, error or omission in  
24 practice, or his or her rendering unauthorized professional  
25 services, the clerk of the court that rendered the judgment shall  
26 report that fact to the agency that issued the license.

27     ~~SEC. 9.~~

28     *SEC. 10.* Section 803.1 of the Business and Professions Code  
29 is amended to read:

30     803.1. (a) Notwithstanding any other provision of law, the  
31 Medical Board of California, the Osteopathic Medical Board of  
32 California, and the California Board of Podiatric Medicine shall  
33 disclose to an inquiring member of the public information  
34 regarding any enforcement actions taken against a licensee by  
35 either board or by another state or jurisdiction, including all of  
36 the following:

37         (1) Temporary restraining orders issued.

38         (2) Interim suspension orders issued.

1 (3) Revocations, suspensions, probations, or limitations on  
2 practice ordered by the board, including those made part of a  
3 probationary order or stipulated agreement.

4 (4) Public letters of reprimand issued.

5 (5) Infractions, citations, or fines imposed.

6 (b) Notwithstanding any other provision of law, in addition to  
7 the information provided in subdivision (a), the Medical Board of  
8 California, the Osteopathic Medical Board of California, and the  
9 California Board of Podiatric Medicine shall disclose to an  
10 inquiring member of the public all of the following:

11 (1) Civil judgments in any amount, whether or not vacated by  
12 a settlement after entry of the judgment, that were not reversed  
13 on appeal and arbitration awards in any amount of a claim or  
14 action for damages for death or personal injury caused by the  
15 physician and surgeon's negligence, error, or omission in  
16 practice, or by his or her rendering of unauthorized professional  
17 services.

18 (2) (A) All settlements in the possession, custody, or control  
19 of the board shall be disclosed for a licensee in the low-risk  
20 category if there are three or more settlements for that licensee  
21 within the last 10 years, except for settlements by a licensee  
22 regardless of the amount paid where (i) the settlement is made as  
23 a part of the settlement of a class claim, (ii) the licensee paid in  
24 settlement of the class claim the same amount as the other  
25 licensees in the same class or similarly situated licensees in the  
26 same class, and (iii) the settlement was paid in the context of a  
27 case where the complaint that alleged class liability on behalf of  
28 the licensee also alleged a products liability class action cause of  
29 action. All settlements in the possession, custody, or control of  
30 the board shall be disclosed for a licensee in the high-risk  
31 category if there are four or more settlements for that licensee  
32 within the last 10 years except for settlements by a licensee  
33 regardless of the amount paid where (i) the settlement is made as  
34 a part of the settlement of a class claim, (ii) the licensee paid in  
35 settlement of the class claim the same amount as the other  
36 licensees in the same class or similarly situated licensees in the  
37 same class, and (iii) the settlement was paid in the context of a  
38 case where the complaint that alleged class liability on behalf of  
39 the licensee also alleged a products liability class action cause of  
40 action. Classification of a licensee in either a "high-risk

category” or a “low-risk category” depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, “settlement” means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars (\$30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee’s staff privileges for medical disciplinary cause or reason.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information



1 received regarding felony convictions of a physician and surgeon  
2 or doctor of podiatric medicine.

3 (d) The Medical Board of California, the Osteopathic Medical  
4 Board of California, and the California Board of Podiatric  
5 Medicine may formulate appropriate disclaimers or explanatory  
6 statements to be included with any information released, and may  
7 by regulation establish categories of information that need not be  
8 disclosed to an inquiring member of the public because that  
9 information is unreliable or not sufficiently related to the  
10 licensee's professional practice. The Medical Board of  
11 California, the Osteopathic Medical Board of California, and the  
12 California Board of Podiatric Medicine shall include the  
13 following statement when disclosing information concerning a  
14 settlement:

15 "Some studies have shown that there is no significant  
16 correlation between malpractice history and a doctor's  
17 competence. At the same time, the State of California believes  
18 that consumers should have access to malpractice information. In  
19 these profiles, the State of California has given you information  
20 about both the malpractice settlement history for the doctor's  
21 specialty and the doctor's history of settlement payments only if  
22 in the last 10 years, the doctor, if in a low-risk specialty, has  
23 three or more settlements or the doctor, if in a high-risk specialty,  
24 has four or more settlements. The State of California has  
25 excluded some class action lawsuits because those cases are  
26 commonly related to systems issues such as product liability,  
27 rather than questions of individual professional competence and  
28 because they are brought on a class basis where the economic  
29 incentive for settlement is great. The State of California has  
30 placed payment amounts into three statistical categories: below  
31 average, average, and above average compared to others in the  
32 doctor's specialty. To make the best health care decisions, you  
33 should view this information in perspective. You could miss an  
34 opportunity for high-quality care by selecting a doctor based  
35 solely on malpractice history.

36 When considering malpractice data, please keep in mind:

37 Malpractice histories tend to vary by specialty. Some  
38 specialties are more likely than others to be the subject of  
39 litigation. This report compares doctors only to the members of

1 their specialty, not to all doctors, in order to make an individual  
2 doctor's history more meaningful.

3 This report reflects data only for settlements made on or after  
4 January 1, 2003. Moreover, it includes information concerning  
5 those settlements for a 10-year period only. Therefore, you  
6 should know that a doctor may have made settlements in the 10  
7 years immediately preceding January 1, 2003, that are not  
8 included in this report. After January 1, 2013, for doctors  
9 practicing less than 10 years, the data covers their total years of  
10 practice. You should take into account the effective date of  
11 settlement disclosure as well as how long the doctor has been in  
12 practice when considering malpractice averages.

13 The incident causing the malpractice claim may have happened  
14 years before a payment is finally made. Sometimes, it takes a  
15 long time for a malpractice lawsuit to settle. Some doctors work  
16 primarily with high-risk patients. These doctors may have  
17 malpractice settlement histories that are higher than average  
18 because they specialize in cases or patients who are at very high  
19 risk for problems.

20 Settlement of a claim may occur for a variety of reasons that do  
21 not necessarily reflect negatively on the professional competence  
22 or conduct of the doctor. A payment in settlement of a medical  
23 malpractice action or claim should not be construed as creating a  
24 presumption that medical malpractice has occurred.

25 You may wish to discuss information in this report and the  
26 general issue of malpractice with your doctor.”

27 (e) The Medical Board of California, the Osteopathic Medical  
28 Board of California, and the California Board of Podiatric  
29 Medicine shall, by regulation, develop standard terminology that  
30 accurately describes the different types of disciplinary filings and  
31 actions to take against a licensee as described in paragraphs (1) to  
32 (5), inclusive, of subdivision (a). In providing the public with  
33 information about a licensee via the Internet pursuant to Section  
34 2027, the Medical Board of California, the Osteopathic Medical  
35 Board of California, and the California Board of Podiatric  
36 Medicine shall not use the terms “enforcement,” “discipline,” or  
37 similar language implying a sanction unless the physician and  
38 surgeon has been the subject of one of the actions described in  
39 paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

~~SEC. 10.~~

*SEC. 11.* Section 803.2 of the Business and Professions Code is repealed.

~~SEC. 11.~~

*SEC. 12.* Section 803.3 of the Business and Professions Code is repealed.

~~SEC. 12.~~

*SEC. 13.* Section 803.5 of the Business and Professions Code is amended to read:

1 803.5. (a) The district attorney, city attorney, or other  
2 prosecuting agency shall notify the Medical Board of California,  
3 the Osteopathic Medical Board of California, the California  
4 Board of Podiatric Medicine, the State Board of Chiropractic  
5 Examiners, or other appropriate allied health board, and the clerk  
6 of the court in which the charges have been filed, of any filings  
7 against a licensee of that board charging a felony immediately  
8 upon obtaining information that the defendant is a licensee of the  
9 board. The notice shall identify the licensee and describe the  
10 crimes charged and the facts alleged. The prosecuting agency  
11 shall also notify the clerk of the court in which the action is  
12 pending that the defendant is a licensee, and the clerk shall  
13 record prominently in the file that the defendant holds a license  
14 from one of the boards described above.

15 (b) The clerk of the court in which a licensee of one of the  
16 boards is convicted of a crime shall, within 48 hours after the  
17 conviction, transmit a certified copy of the record of conviction  
18 to the applicable board.

19 ~~SEC. 13.~~

20 *SEC. 14.* Section 804 of the Business and Professions Code is  
21 amended to read:

22 804. (a) Any agency to whom reports are to be sent under  
23 Section 801, 801.1, 802, or 803, may develop a prescribed form  
24 for the making of the reports, usage of which it may, but need  
25 not, by regulation, require in all cases.

26 (b) A report required to be made by Sections 801, 801.1, or  
27 802 shall be deemed complete only if it includes the following  
28 information: (1) the name and last known business and  
29 residential addresses of every plaintiff or claimant involved in the  
30 matter, whether or not each plaintiff or claimant recovered  
31 anything; (2) the name and last known business and residential  
32 addresses of every physician or provider of health care services  
33 who was claimed or alleged to have acted improperly, whether or  
34 not that person was a named defendant and whether or not any  
35 recovery or judgment was had against that person; (3) the name,  
36 address, and principal place of business of every insurer  
37 providing professional liability insurance as to any person named  
38 in (2), and the insured's policy number; (4) the name of the court  
39 in which the action or any part of the action was filed along with  
40 the date of filing and docket number of each action; (5) a brief

1 description or summary of the facts upon which each claim,  
2 charge or judgment rested including the date of occurrence; (6)  
3 the names and last known business and residential addresses of  
4 every person who acted as counsel for any party in the litigation  
5 or negotiations, along with an identification of the party whom  
6 said person represented; (7) the date and amount of final  
7 judgment or settlement; and (8) any other information the agency  
8 to whom the reports are to be sent may, by regulation, require.

9 (c) Every person named in the report, who is notified by the  
10 board within 60 days of the filing of the report, shall maintain for  
11 the period of three years from the filing of the report any records  
12 he or she has as to the matter in question and shall make those  
13 available upon request to the agency with which the report was  
14 filed.

15 ~~SEC. 14.~~

16 *SEC. 15.* Section 804.5 of the Business and Professions Code  
17 is repealed.

18 *SEC. 16.* *Section 805 of the Business and Professions Code is*  
19 *amended to read:*

20 805. (a) As used in this section, the following terms have the  
21 following definitions:

22 (1) “Peer review body” includes:

23 (A) A medical or professional staff of any health care facility  
24 or clinic licensed under Division 2 (commencing with Section  
25 1200) of the Health and Safety Code or of a facility certified to  
26 participate in the federal Medicare program as an ambulatory  
27 surgical center.

28 (B) A health care service plan registered under Chapter 2.2  
29 (commencing with Section 1340) of Division 2 of the Health and  
30 Safety Code or a disability insurer that contracts with licentiates  
31 to provide services at alternative rates of payment pursuant to  
32 Section 10133 of the Insurance Code.

33 (C) Any medical, psychological, marriage and family therapy,  
34 social work, dental, or podiatric professional society having as  
35 members at least 25 percent of the eligible licentiates in the area  
36 in which it functions (which must include at least one county),  
37 which is not organized for profit and which has been determined  
38 to be exempt from taxes pursuant to Section 23701 of the  
39 Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) “Licentiate” means a physician and surgeon, ~~podiatrist~~ *doctor of podiatric medicine*, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. “Licentiate” also includes a person authorized to practice medicine pursuant to Section 2113.

(3) “Agency” means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) “Staff privileges” means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) “Denial or termination of staff privileges, membership, or employment” includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) “Medical disciplinary cause or reason” means that aspect of a licentiate’s competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) “805 report” means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

(1) A licentiate’s application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

1 (2) A licentiate's membership, staff privileges, or employment  
2 is terminated or revoked for a medical disciplinary cause or  
3 reason.

4 (3) Restrictions are imposed, or voluntarily accepted, on staff  
5 privileges, membership, or employment for a cumulative total of  
6 30 days or more for any 12-month period, for a medical  
7 disciplinary cause or reason.

8 (c) The chief of staff of a medical or professional staff or other  
9 chief executive officer, medical director, or administrator of any  
10 peer review body and the chief executive officer or administrator  
11 of any licensed health care facility or clinic shall file an 805  
12 report with the relevant agency within 15 days after any of the  
13 following occur after notice of either an impending investigation  
14 or the denial or rejection of the application for a medical  
15 disciplinary cause or reason:

16 (1) Resignation or leave of absence from membership, staff, or  
17 employment.

18 (2) The withdrawal or abandonment of a licentiate's  
19 application for staff privileges or membership.

20 (3) The request for renewal of those privileges or membership  
21 is withdrawn or abandoned.

22 (d) For purposes of filing an 805 report, the signature of at  
23 least one of the individuals indicated in subdivision (b) or (c) on  
24 the completed form shall constitute compliance with the  
25 requirement to file the report.

26 (e) An 805 report shall also be filed within 15 days following  
27 the imposition of summary suspension of staff privileges,  
28 membership, or employment, if the summary suspension remains  
29 in effect for a period in excess of 14 days.

30 (f) A copy of the 805 report, and a notice advising the  
31 licentiate of his or her right to submit additional statements or  
32 other information pursuant to Section 800, shall be sent by the  
33 peer review body to the licentiate named in the report.

34 The information to be reported in an 805 report shall include  
35 the name and license number of the licentiate involved, a  
36 description of the facts and circumstances of the medical  
37 disciplinary cause or reason, and any other relevant information  
38 deemed appropriate by the reporter.

39 A supplemental report shall also be made within 30 days  
40 following the date the licentiate is deemed to have satisfied any

1 terms, conditions, or sanctions imposed as disciplinary action by  
2 the reporting peer review body. In performing its dissemination  
3 functions required by Section 805.5, the agency shall include a  
4 copy of a supplemental report, if any, whenever it furnishes a  
5 copy of the original 805 report.

6 If another peer review body is required to file an 805 report, a  
7 health care service plan is not required to file a separate report  
8 with respect to action attributable to the same medical  
9 disciplinary cause or reason. If the Medical Board of California  
10 or a licensing agency of another state revokes or suspends,  
11 without a stay, the license of a physician, a peer review body is  
12 not required to file an 805 report when it takes an action as a  
13 result of the revocation or suspension.

14 (g) The reporting required by this section shall not act as a  
15 waiver of confidentiality of medical records and committee  
16 reports. The information reported or disclosed shall be kept  
17 confidential except as provided in subdivision (c) of Section 800  
18 and Sections 803.1 and 2027, provided that a copy of the report  
19 containing the information required by this section may be  
20 disclosed as required by Section 805.5 with respect to reports  
21 received on or after January 1, 1976.

22 (h) The Medical Board of California, the Osteopathic Medical  
23 Board of California, and the Dental Board of California shall  
24 disclose reports as required by Section 805.5.

25 (i) An 805 report shall be maintained by an agency for  
26 dissemination purposes for a period of three years after receipt.

27 (j) No person shall incur any civil or criminal liability as the  
28 result of making any report required by this section.

29 (k) A willful failure to file an 805 report by any person who is  
30 designated or otherwise required by law to file an 805 report is  
31 punishable by a fine not to exceed one hundred thousand dollars  
32 (\$100,000) per violation. The fine may be imposed in any civil or  
33 administrative action or proceeding brought by or on behalf of  
34 any agency having regulatory jurisdiction over the person  
35 regarding whom the report was or should have been filed. If the  
36 person who is designated or otherwise required to file an 805  
37 report is a licensed physician and surgeon, the action or  
38 proceeding shall be brought by the Medical Board of California.  
39 The fine shall be paid to that agency but not expended until  
40 appropriated by the Legislature. A violation of this subdivision



1 may constitute unprofessional conduct by the licentiate. A person  
2 who is alleged to have violated this subdivision may assert any  
3 defense available at law. As used in this subdivision, “willful”  
4 means a voluntary and intentional violation of a known legal  
5 duty.

6 (l) Except as otherwise provided in subdivision (k), any failure  
7 by the administrator of any peer review body, the chief executive  
8 officer or administrator of any health care facility, or any person  
9 who is designated or otherwise required by law to file an 805  
10 report, shall be punishable by a fine that under no circumstances  
11 shall exceed fifty thousand dollars (\$50,000) per violation. The  
12 fine may be imposed in any civil or administrative action or  
13 proceeding brought by or on behalf of any agency having  
14 regulatory jurisdiction over the person regarding whom the report  
15 was or should have been filed. If the person who is designated or  
16 otherwise required to file an 805 report is a licensed physician  
17 and surgeon, the action or proceeding shall be brought by the  
18 Medical Board of California. The fine shall be paid to that  
19 agency but not expended until appropriated by the Legislature.  
20 The amount of the fine imposed, not exceeding fifty thousand  
21 dollars (\$50,000) per violation, shall be proportional to the  
22 severity of the failure to report and shall differ based upon  
23 written findings, including whether the failure to file caused  
24 harm to a patient or created a risk to patient safety; whether the  
25 administrator of any peer review body, the chief executive officer  
26 or administrator of any health care facility, or any person who is  
27 designated or otherwise required by law to file an 805 report  
28 exercised due diligence despite the failure to file or whether they  
29 knew or should have known that an 805 report would not be  
30 filed; and whether there has been a prior failure to file an 805  
31 report. The amount of the fine imposed may also differ based on  
32 whether a health care facility is a small or rural hospital as  
33 defined in Section 124840 of the Health and Safety Code.

34 (m) A health care service plan registered under Chapter 2.2  
35 (commencing with Section 1340) of Division 2 of the Health and  
36 Safety Code or a disability insurer that negotiates and enters into  
37 a contract with licentiates to provide services at alternative rates  
38 of payment pursuant to Section 10133 of the Insurance Code,  
39 when determining participation with the plan or insurer, shall  
40 evaluate, on a case-by-case basis, licentiates who are the subject

1 of an 805 report, and not automatically exclude or deselect these  
2 licentiates.

3 ~~SEC. 15.~~

4 *SEC. 17.* Section 805.2 of the Business and Professions Code  
5 is amended to read:

6 805.2. (a) It is the intent of the Legislature to provide for a  
7 comprehensive study of the peer review process as it is  
8 conducted by peer review bodies defined in paragraph (1) of  
9 subdivision (a) of Section 805, in order to evaluate the continuing  
10 validity of Section 805 and Sections 809 to 809.8, inclusive, and  
11 their relevance to the conduct of peer review in California.

12 (b) The Medical Board of California shall contract with an  
13 independent entity to conduct this study that is fair, objective,  
14 and free from bias that is directly familiar with the peer review  
15 process and does not advocate regularly before the board on peer  
16 review matters or on physician and surgeon disciplinary matters.

17 (c) The study by the independent entity shall include, but not  
18 be limited to, the following components:

19 (1) A comprehensive description of the various steps of and  
20 decisionmakers in the peer review process as it is conducted by  
21 peer review bodies throughout the state, including the role of  
22 other related committees of acute care health facilities and clinics  
23 involved in the peer review process.

24 (2) A survey of peer review cases to determine the incidence  
25 of peer review by peer review bodies, and whether they are  
26 complying with the reporting requirement in Section 805.

27 (3) A description and evaluation of the roles and performance  
28 of various state agencies, including the State Department of  
29 Health Services and occupational licensing agencies that regulate  
30 healing arts professionals, in receiving, reviewing, investigating,  
31 and disclosing peer review actions, and in sanctioning peer  
32 review bodies for failure to comply with Section 805.

33 (4) An assessment of the cost of peer review to licentiates and  
34 the facilities which employ them.

35 (5) An assessment of the time consumed by the average peer  
36 review proceeding, including the hearing provided pursuant to  
37 Section 809.2, and a description of any difficulties encountered  
38 by either licentiates or facilities in assembling peer review bodies  
39 or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(9) An assessment of the role of medical professionals, using professionals who are experts and are actively practicing medicine in this state, to review and investigate for the protection of consumers, allegations of substandard practice or professional misconduct.

(10) An assessment of the process to identify and retain a medical professional with sufficient expertise to review allegations of substandard practice or professional misconduct by a physician and surgeon, if the peer review process is discontinued.

(d) The independent entity shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the independent entity ~~and provide~~ *in providing* raw data, information, and case files as requested in a mutually agreeable timeframe.

(e) The case files *and other information obtained by the independent entity* shall be confidential ~~and shall not be released by the independent entity except as aggregate data, examples, or in the report, but shall not be associated with or identifiable as related to a specific facility or peer review body.~~

~~(f) Providing confidential data, information, case files or records, and hearing documents by the peer review body, facility, hospital, clinic, or plan to the independent entity at any time after the independent entity is hired by the board to perform the peer review study shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or~~

1 ~~privilege otherwise provided by law that is applicable to the data,~~  
2 ~~information, case files or records, and hearing documents.~~

3 ~~(g) Any discovery of information by the independent entity~~  
4 ~~that should have been reported pursuant to Section 805, shall be~~  
5 ~~reported immediately by the appropriate reporter, as defined in~~  
6 ~~subdivision (b) of Section 805, upon discovery, but the reporter~~  
7 ~~shall not be subject to penalties under subdivisions (k) or (l) of~~  
8 ~~Section 805, if that report is made to the board within fifteen (15)~~  
9 ~~days of discovery by the independent entity..~~ *The independent*  
10 *entity shall not release the case files or other information it*  
11 *obtains to any individual, agency, or entity, including the board,*  
12 *except as aggregate data, examples, or in the final report*  
13 *submitted to the board and the Legislature, but in no case shall*  
14 *information released under these exemptions be identifiable in*  
15 *any way or associated with, or related to, a specific facility,*  
16 *individual, or peer review body.*

17 *(f) Notwithstanding any other provision of law, information*  
18 *obtained from a peer review body or from any other person or*  
19 *entity and information otherwise generated by the independent*  
20 *entity, including, but not limited to, raw data, patient*  
21 *information, case files or records, interviews and records of*  
22 *interviews, proceedings of a peer review body, and analyses or*  
23 *conclusions of the independent entity, shall not be subject to*  
24 *discovery or to a subpoena or a subpoena duces tecum and shall*  
25 *not be admissible as evidence in any court of law in this state.*  
26 *The information described in this subdivision shall be subject to*  
27 *all other confidentiality protections and privileges otherwise*  
28 *provided by law. The independent entity and its employees and*  
29 *contractors shall assert all of the protections for the information*  
30 *described in this subdivision that may apply in order to protect*  
31 *the information from disclosure.*

32 *(g) The independent entity shall report to the peer review body*  
33 *any information it obtains from the peer review body that the*  
34 *independent entity determines should have been reported*  
35 *pursuant to Section 805. The independent entity shall include*  
36 *with the report a clear explanation of the reasons it determined*  
37 *that the information warrants a report under Section 805. If the*  
38 *peer review body agrees with the independent entity's*  
39 *determination, the peer review body shall report the information*  
40 *pursuant to Section 805 without being subject to penalties under*

1 *subdivision (k) or (l) of Section 805, if the peer review body*  
2 *makes the report to the board within 30 days of the date the*  
3 *independent entity reported its determination to the peer review*  
4 *body, unless additional time is required to afford due process or*  
5 *fair hearing rights to the subject of the report as required by*  
6 *Section 805 and Sections 809.1 and following.*

7 (h) The independent entity shall work in cooperation with and  
8 under the general oversight of the Executive Director of the  
9 Medical Board of California and shall submit a written report  
10 with its findings and recommendations to the board and the  
11 Legislature no later than July 31, 2008.

12 (i) Completion of the peer review study pursuant to this  
13 section shall be among the highest priorities of the Medical  
14 Board of California, and the board shall ensure that it is  
15 completed no later than July 31, 2008.

16 ~~SEC. 16.~~

17 ~~SEC. 18.~~ Section 2026 of the Business and Professions Code  
18 is repealed.

19 ~~SEC. 17.~~

20 ~~SEC. 19.~~ Section 2026 is added to the Business and  
21 Professions Code, to read:

22 2026. The California Research Bureau (CRB) of the  
23 California State Library shall study the role of public disclosure  
24 in the public protection mandate of the board. The ensuing CRB  
25 report shall include, but not be limited to, considering whether  
26 the public is adequately informed about physician misconduct by  
27 the current laws and regulations providing for disclosure. The  
28 study shall present policy options for improving public access.  
29 ~~The Medical Board~~ *board* shall work cooperatively with the  
30 ~~bureau~~ *CRB*, providing cost-free access and reproduction  
31 assistance to ~~Medical Board~~ *the board's* records while protecting  
32 the identity and privacy of all persons involved in any complaint.  
33 The provision of confidential data, information, and case files by  
34 the board to the CRB shall not constitute a waiver of any  
35 exemption from disclosure or discovery or of any confidentiality  
36 protection or privilege otherwise provided by law that is  
37 applicable to the data, information, or case files. Data will be  
38 presented in aggregate categories. This study shall be  
39 commenced as soon as possible and a report to the Legislature  
40 completed no later than July 1, 2008.

1     ~~SEC. 18.~~

2     ~~SEC. 20.~~ Section 2027 of the Business and Professions Code  
3 is amended to read:

4     2027. (a) On or after July 1, 2001, the board shall post on the  
5 Internet the following information in its possession, custody, or  
6 control regarding licensed physicians and surgeons:

7     (1) With regard to the status of the license, whether or not the  
8 licensee is in good standing, subject to a temporary restraining  
9 order (TRO), subject to an interim suspension order (ISO), or  
10 subject to any of the enforcement actions set forth in Section  
11 803.1.

12    (2) With regard to prior discipline, whether or not the licensee  
13 has been subject to discipline by the board or by the board of  
14 another state or jurisdiction, as described in Section 803.1.

15    (3) Any felony convictions reported to the board after January  
16 3, 1991.

17    (4) All current accusations filed by the Attorney General,  
18 including those accusations that are on appeal. For purposes of  
19 this paragraph, “current accusation” shall mean an accusation  
20 that has not been dismissed, withdrawn, or settled, and has not  
21 been finally decided upon by an administrative law judge and the  
22 Medical Board of California unless an appeal of that decision is  
23 pending.

24    (5) Any malpractice judgment or arbitration award reported to  
25 the board after January 1, 1993.

26    (6) Any hospital disciplinary actions that resulted in the  
27 termination or revocation of a licensee’s hospital staff privileges  
28 for a medical disciplinary cause or reason.

29    (7) Any misdemeanor conviction ~~that is substantially related to~~  
30 ~~the qualifications, functions, or duties of a physician and~~  
31 ~~surgeon. For purposes of this paragraph, when determining~~  
32 ~~whether a conviction is substantially related to the qualifications,~~  
33 ~~functions, or duties of a physician and surgeon, the board shall~~  
34 ~~consider whether the underlying facts and circumstances involve~~  
35 ~~an offense against the person, an offense of moral turpitude, an~~  
36 ~~offense involving the use of drugs or alcohol, a violation of this~~  
37 ~~chapter, or a violation of relevant provisions of the Health and~~  
38 ~~Safety Code.~~ *results in a disciplinary action or an accusation*  
39 *that is not subsequently withdrawn or dismissed.*

1 (8) Appropriate disclaimers and explanatory statements to  
2 accompany the above information, including an explanation of  
3 what types of information are not disclosed. These disclaimers  
4 and statements shall be developed by the board and shall be  
5 adopted by regulation.

6 (9) Any information required to be disclosed pursuant to  
7 Section 803.1.

8 (b) (1) From January 1, 2003, the information described in  
9 paragraphs (1) (other than whether or not the licensee is in good  
10 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain  
11 posted for a period of 10 years from the date the board obtains  
12 possession, custody, or control of the information, and after the  
13 end of that period shall be removed from being posted on the  
14 board's Internet Web site. Information in the possession, custody,  
15 or control of the board prior to January 1, 2003, shall be posted  
16 for a period of 10 years from January 1, 2003. Settlement  
17 information shall be posted as described in paragraph (2) of  
18 subdivision (b) of Section 803.1.

19 (2) The information described in paragraphs (3) and (6) of  
20 subdivision (a) shall not be removed from being posted on the  
21 board's Internet Web site. Notwithstanding the provisions of this  
22 paragraph, if a licensee's hospital staff privileges are restored and  
23 the licensee notifies the board of the restoration, the information  
24 pertaining to the termination or revocation of those privileges, as  
25 described in paragraph (6) of subdivision (a), shall remain posted  
26 for a period of 10 years from the restoration date of the  
27 privileges, and at the end of that period shall be removed from  
28 being posted on the board's Internet Web site.

29 (c) The board shall provide links to other Web sites on the  
30 Internet that provide information on board certifications that  
31 meet the requirements of subdivision (b) of Section 651. The  
32 board may provide links to other Web sites on the Internet that  
33 provide information on health care service plans, health insurers,  
34 hospitals, or other facilities. The board may also provide links to  
35 any other sites that would provide information on the affiliations  
36 of licensed physicians and surgeons.

37 ~~SEC. 19.~~

38 *SEC. 21.* Section 2435 of the Business and Professions Code  
39 is amended to read:

1     2435. The following fees apply to the licensure of physicians  
2 and surgeons:

3     (a) Each applicant for a certificate based upon a national board  
4 diplomate certificate, each applicant for a certificate based on  
5 reciprocity, and each applicant for a certificate based upon  
6 written examination, shall pay a nonrefundable application and  
7 processing fee, as set forth in subdivision (b), at the time the  
8 application is filed.

9     (b) The application and processing fee shall be fixed by the  
10 Division of Licensing by May 1 of each year, to become  
11 effective on July 1 of that year. The fee shall be fixed at an  
12 amount necessary to recover the actual costs of the licensing  
13 program as projected for the fiscal year commencing on the date  
14 the fees become effective.

15     (c) Each applicant who qualifies for a certificate, as a  
16 condition precedent to its issuance, in addition to other fees  
17 required herein, shall pay an initial license fee, if any. The initial  
18 license fee shall be seven hundred ninety dollars (\$790). An  
19 applicant enrolled in an approved postgraduate training program  
20 shall be required to pay only 50 percent of the initial license fee.

21     (d) The biennial renewal fee shall be seven hundred ninety  
22 dollars (\$790).

23     (e) Notwithstanding subdivisions (c) and (d) and to ensure that  
24 subdivision (k) of Section 125.3 is revenue neutral with regard to  
25 the board, the board may, by regulation, increase the amount of  
26 the initial license fee and the biennial renewal fee by an amount  
27 required to recover both of the following:

28     (1) The average amount received by the board during the three  
29 fiscal years immediately preceding July 1, 2006, as  
30 reimbursement for the reasonable costs of investigation and  
31 enforcement proceedings pursuant to Section 125.3.

32     (2) Any increase in the amount of investigation and  
33 enforcement costs incurred by the board after January 1, 2006,  
34 that exceeds the average costs expended for investigation and  
35 enforcement costs during the three fiscal years immediately  
36 preceding July 1, 2006. When calculating the amount of costs for  
37 services for which the board paid an hourly rate, the board shall  
38 use the average number of hours for which the board paid for  
39 those costs over these prior three fiscal years, multiplied by the  
40 hourly rate paid by the board for those costs as of July 1, 2005.



Beginning January 1, 2009, the board shall instead use the average number of hours for which it paid for those costs over the three-year period of fiscal years 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate paid by the board for those costs as of July 1, 2005. In calculating the increase in the amount of investigation and enforcement costs, the board shall include only those costs for which it was eligible to obtain reimbursement under Section 125.3 and shall not include probation monitoring costs and disciplinary costs, including those associated with the citation and fine process and those required to implement subdivision (b) of Section 12529 of the Government Code.

(f) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(g) The duplicate certificate and endorsement fees shall each be fifty dollars (\$50), and the certification and letter of good standing fees shall each be ten dollars (\$10).

(h) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(i) Not later than July 1, 2007, the Bureau of State Audits (BSA) shall conduct a review of the board's financial status, its financial projections and historical projections, including, but not limited to, its projections related to expenses, revenues, and reserves. The BSA shall, on the basis of the review, report to the Joint Legislative Audit Committee before January 1, 2008, on any adjustment to the amount of the licensure fee that is required to maintain the reserve amount in the Contingent Fund of the Medical Board of California pursuant to subdivision (h) of Section 2435, and whether a refund of any excess revenue should be made to licentiates.

~~SEC. 20.~~

*SEC. 22.* Section 12529.6 of the Government Code is amended to read:

12529.6. (a) The Legislature finds and declares that the Medical Board of California, by ensuring the quality and safety of medical care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases

1 involving alleged misconduct by physicians and surgeons, and  
2 the evidentiary burden in the board's disciplinary cases, the  
3 Legislature finds and declares that using a vertical prosecution  
4 model for those investigations is in the best interests of the  
5 people of California.

6 (b) Notwithstanding any other provision of law, as of January  
7 1, 2006, each complaint that is referred to a district office of the  
8 board for investigation; shall be simultaneously and jointly  
9 assigned to an investigator and to the deputy attorney general in  
10 the Health Quality Enforcement Section responsible for  
11 prosecuting the case if the investigation results in the filing of an  
12 accusation. The joint assignment of the investigator and the  
13 deputy attorney general shall exist for the duration of the  
14 disciplinary matter. During the assignment, the investigator so  
15 assigned shall, under the direction of the deputy attorney general,  
16 be responsible for obtaining the evidence required to permit the  
17 Attorney General to advise the board on legal matters such as  
18 whether the board should file a formal accusation, dismiss the  
19 complaint for a lack of evidence required to meet the applicable  
20 burden of proof, or take other appropriate legal action.

21 (c) The Medical Board of California, the Department of  
22 Consumer Affairs, and the Office of the Attorney General shall,  
23 if necessary, enter into an interagency agreement to implement  
24 this section.

25 (d) This section does not affect the requirements of Section  
26 12529.5 as applied to the Medical Board of California where  
27 complaints that have not been assigned to a field office for  
28 investigation are concerned.

29 (e) This section shall become inoperative on July 1, 2008, and,  
30 as of January 1, 2009, is repealed, unless a later enacted statute,  
31 that is enacted before January 1, 2009, deletes or extends the  
32 dates on which it becomes inoperative and is repealed.